IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 13.07.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice V.DHANAPALAN

Writ Appeal No.1276 of 2002

S.A. Velusamy
S.A. Natarajan
S.A. Aruchami ... Appellants/Petitioners

vs.

1. State of Tamilnadu, Rep. by
The Secretary to Government,
Housing & Urban Development,
Fort St. George, Chennai 600 009.

2. Special Tahsildar,
Land Acquisition Housing Scheme,
Unit-III, Coimbatore 641 018. ... Respondents/Respondents

Appeal under Clause 15 of the Letters Patent against the Order passed by the learned single Judge, dated 05.02.2002, made in W.P. No.18843 of 1994.

WP No.18843/94: Petition filed under Article 226 of the constitution of the India to issue a writ of certiorari calling for the records relating to G.O.Ms.No.1336 Housing and Urban Development dated 8.10.91 and published in the Tamil Nadu Government Gazette dated 30.10.91 part II Sec.2 inissuing notification under sec.4(1) of the Land acquisition Act 1894, and G.O.Ms.No.756 Housing and Urban Development dated 7.11.92 and published in the Tamil Nadu Government Gazette dated 10.11.92 in issuing declaration under sec.6 of the said act in so far as the petitioners' lands are concerned and situate in S.No.109/1 No.13, Vilankurichi Village Coimbatore north taluk, Coimbatore District in an extent of 1.84.0 hectares quash the same and consequently forbearing the respondents herein from in any manner dispossing the petitioners or in any manner proceedings with the land acquisition proceedings with respect to the aforesaid lands.

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For Appellants : Mr.Srinath Sridevan
For Respondents: Mr.C.Thirumaran, Govt. Advocate.

J U D G M E N T

P.SATHASIVAM, J.

Aggrieved by the order of the learned single Judge, dated 05.02.2002, made in W.P. No.18843 of 1994, the writ petitioners have preferred the above Appeal.

For convenience, we shall refer the parties as described before the learned single Judge.

2. According to the petitioners, the property comprised in S. No.109/1, No.13, Vilankurichi Village, Coimbatore North Taluk, Coimbatore District, originally belonged to their father late Arunachala Gounder. After the demise of their father, they have been in joint possession and enjoyment of the aforesaid property by changing the patta in their name. They are the permanent residents of Coimbatore. Whileso, they came to know during the second week of October, 1994, from the neighbouring land owners about acquisition of their land by the respondents for implementation of a Housing Scheme.

3. Mr.Srinath Sridevan, learned counsel appearing for the petitioners/appellants, after taking us through the relevant materials and the impugned order of the learned Judge, has raised the following contentions.

Inasmuch there has been no service of notice relating to Notification under Section 4(1) and Declaration under Section-6 of the Land Acquisition Act, the entire acquisition proceedings are liable to be quashed. He also contended that, in the absence of personal notice to the petitioners, the authorities must have correctly mentioned their names and address in the Gazette Notification. But, the Gazette Notification refers different names instead of correctly mentioning the names of the petitioners. He further contended that, inasmuch as the publication of Notification under Section 4(1) in all three modes, viz., Gazette, Paper and public notice, is mandatory, the publication in the Newspapers viz., "Namathu MGR" and "Pirpagal", which have no circulation in the area where the land situates, cannot constitute a valid publication as provided in the Act.

4. On the other hand, Mr.C.Thirumaran, learned Government Advocate appearing for the respondents contended that there is no procedural flaw or violation in the proceedings and prayed for

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dismissal of the Writ Appeal.

5. We have carefully considered the rival contentions. It is the specific case of the petitioners that the land in S. No.109/1, No.13, Vilankurichi Village, Coimbatore North Taluk, originally belonged to their father late Arunachala Gounder and that, after his death, all the petitioners, being sons, have been in joint possession and enjoyment of the said property. It is also stated that they secured patta in their names. In other words, according to them, even in the revenue records, their name finds place, in such circumstances, it is the grievance of the petitioners that the respondents ought to have issued notice to them under Section 4 (1) of the Act to put forth their objection in the enquiry under Section 5-A. In the absence of counter affidavit, highlighting the stand of the respondents, and relevant records, this Court has no other option except to accept the specific claim of the petitioners and hold that they had no opportunity to put forth their objection in the enquiry under Section 5-A. Learned counsel for the petitioner also brought to our notice that, apart from the above infirmity, names of the petitioners have not been correctly mentioned in the Gazette Notification. It is pointed out that all the three names have not been correctly described. There is no explanation at all why the names of the petitioners have not been correctly stated in the Gazette Notification.

6. Learned counsel for the petitioners further submitted that, though it is the case of the respondents that the substance of the 4(1) Notification was published in two Newspapers, viz., "Namathu MGR" and "Pirpagal", those Newspapers have no circulation in the area concerned, hence, it cannot be construed as a valid publication.

7. Sub section 1 of Section 4 of the Act mandates that whenever the Government wants to acquire a land for any public purpose, a notification to that effect shall be published (1) in Official Gazette; (2) in two Daily Newspapers circulating in that locality of which one shall be in regional language; and (3) public notice of the substance of such notification is to be given at convenient places in the said locality. Courts have held that all the three modes of publication are mandatory and failure to comply with the same would vitiate the acquisition proceedings.

8. In the light of the statutory provisions, let us test as to whether the publication in the Newspapers, viz., 'Namathu MGR' and 'Pirpagal', satisfied the mandate prescribed in subsection(1). It is the specific case of the petitioners that both the papers have no circulation in the locality where the land situates. We have already referred to the fact that the respondents have not filed counter affidavit conveying their stand, particularly about the

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aspect relating to circulation of those papers in the area where the land situates. We have pointed out that the petitioners were not served with individual notice and also noted the discrepancies in referring their names in the Gazette Notification. Even in the year 2000, while considering the issue relating to three modes of publication as provided in Section 4(1); after noting that all the three modes of publication are mandatory and that the publication in 'Kumari Murasu' and 'Kinnas' Daily Newspapers is not in compliance of the requirement under Section 4(1) as they are not having circulation in the area where the land situates; one of us (P.SATHASIVAM, J.), quashed the acquisition proceedings (see 2000 (III) CTC 215 (Chelladurai, N. v. Government of Tamil Nadu).

9. In Krishnan, V. vs. Government of Tamil Nadu (2001 (4) CTC 108), a Division Bench of this Court, after finding that paper publication of Section 4(1) notification in 'Madurai Mani' and 'Guiness' is not proper publication, quashed the acquisition proceedings.

10. In the decision reported in 2005 (1) L.W. 799 (The Secretary to Government of Tamil Nadu & another vs. J.Sivaprakasam & 10 others), a Division Bench of this Court, after considering sub-section (1) of Section 4 and by referring to various earlier decisions of this Court, other High Courts and the Supreme Court, observed that "newspapers circulating in the locality" means the Newspapers having reasonably wide circulation in the locality. Ultimately, after finding that there is no material to establish that the newspapers 'Kathiravan' and 'Madurai Mani' are having circulation in Chennai, where the property is situated, the Division Bench quashed the acquisition proceedings.

11. The requirements of Section 4 (1) of the Land Acquisition Act have been held to be mandatory by the Supreme Court vide Khoob chand Vs. State of Rajastahan, AIR 1967 SC 104, Narendrajit Singh Vs. State of U.P., AIR 1971 SC 306 = 84 L.W.71 S.N., etc.

12. It is to be noted that Section 4(1) of the Land Acquisition Act was amended by Act 68/84 and a further requirement was made that the Notification shall be published in two daily Newspapers circulating in the locality of which at least one shall be in the regional language.

13. Further, not only Notifications are to be issued under section 4(1) and 6(1), but, those notifications must also conform to the requirements of those two sections. In the case on hand, no material has been placed before us by the respondents to establish that the said newspapers have reasonable circulation in Coimbatore North, where the property situates, hence, such publication of the

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Notification under Section 4(1), in our opinion, is not in compliance with the mandatory requirement of Section 4(1), as such, the land Acquisition proceedings are vitiated. In view of the interpretation of subsection 1 of Section 4 by this Court as well as the Apex Court as mandatory, the respondents have to comply with all the three modes of publication. In all fairness, the respondents ought to have published the notification in the leading Dailies which are in circulation in that locality. We hereby direct the Government and the authorities empowered to initiate acquisition proceedings to publish the acquisition proceedings in the leading Dailies having circulation in the locality where the land situates.

14. It is not in dispute that because of non-compliance of the requirements provided in Section 4 (1), the petitioners did not appear in the 5-A enquiry, due to which, they had no occasion to put forth their objection. Though the learned Judge took note of all these infirmities, failed to appreciate the same and committed an error in dismissing the Writ Petition.

15. In these circumstances, the order dated 05.02.2002, made in WP No.18843 of 1994, is set aside and the entire acquisition proceedings are quashed. Writ Appeal is allowed. No costs. However, it is made clear that the respondents are free to proceed afresh, if they so desire, by following the provisions of the Act and Rules.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

JI.

To
1. The Secretary to Government,State of Tamil Nadu Housing & Urban Development, Fort St. George, Chennai 600 009.
2.The Special Tahsildar, Land Acquisition Housing Scheme, Unit-III, Coimbatore 641 018.

+1cc to Mr.Srinath Sridevan, Advocate Sr 30448

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km/20.7.

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